

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of)	File No. EB-10-SE-047
)	NAL/Acct. No. 201132100027
Shubat Transportation Company)	FRN 0019629450
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 10, 2011**Released: March 10, 2011**

By the Acting Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Shubat Transportation Company (“Shubat”), former licensee of Private Land Mobile Radio Service (“PLMRS”) station WPMH780, Hibbing, Minnesota, apparently liable for a forfeiture in the amount of nineteen thousand dollars (\$19,000) for apparent willful and repeated violation of section 301 of the Communications Act of 1934, as amended (“Act”)¹ and section 1.903(a) of the Commission’s rules (“Rules”)² and for apparent willful violation of section 1.949(a) of the Rules.³ The noted apparent violations involve Shubat’s operation of the station for more than six years without Commission authority and its failure to timely file a renewal application for its PLMRS station.

II. BACKGROUND

2. On July 30, 1998, Shubat was granted a five-year license to operate station WPMH780 through July 30, 2003.⁴ On May 5, 2003, the Commission’s Wireless Telecommunications Bureau (“WTB”) sent Shubat an automated “renewal reminder” notice for station WPMH780.⁵ Shubat did not submit a renewal application for station WPMH780 prior to the license expiration date. In the absence of such filing, Shubat’s license for station WPMH780 automatically terminated on the expiration date.⁶ On March 11, 2010, Shubat filed with WTB a request for Special Temporary Authority (“STA”), stating that it had discovered that its license for station WPMH780 had expired over six years earlier and that the STA

¹ 47 U.S.C. § 301.

² 47 C.F.R. § 1.903(a).

³ 47 C.F.R. § 1.949(a).

⁴ See <http://wireless2.fcc.gov/UlsApp/UlsSearch/license.jsp?licKey=1794709>.

⁵ See Automated Renewal Reminder Letter from the Wireless Telecommunications Bureau, Federal Communications Commission, to Shubat Transportation Company, Reference No. 1844527 (May 5, 2003).

⁶ See 47 C.F.R. § 1.955(a)(1) (stating that “[a]uthorizations automatically terminate, without specific Commission action, on the expiration date specified therein, unless a timely application for renewal is filed.”). On October 5, 2003, Commission records were updated to reflect the license’s automatic termination. See <http://wireless2.fcc.gov/UlsApp/UlsSearch/license.jsp?licKey=1794709>.

was necessary for continued operation of its radio communications while it began the process of applying for a new license.⁷ On March 12, 2010, WTB granted the STA under call sign WQLN311.⁸ On March 23, 2010, Shubat filed an application for a new PLMRS station license.⁹ On April 12, 2010, WTB granted the new license under call sign WQLR868.¹⁰

3. Because it appeared that Shubat may have operated station WPMH780 after the expiration of its license, WTB referred the matter to the Enforcement Bureau for investigation and possible enforcement action. On July 16, 2010, the Spectrum Enforcement Division of the Enforcement Bureau issued a letter of inquiry (“LOI”) to Shubat.¹¹

4. In its July 27, 2010 response to the LOI,¹² Shubat states that it discovered the expiration of its license to operate station WPMH780 on January 25, 2008. Shubat further claimed that its personnel “did not have knowledge of FCC requirements/procedures,” and Shubat sought assistance from third parties to address its expired license.¹³ Specifically, Shubat asserts that in mid-February 2010, after the company servicing its radio equipment discontinued communications with Shubat regarding the expired license, Shubat contacted another company for help.¹⁴ About a month later, this second company submitted a letter to the FCC on Shubat’s behalf requesting an STA.¹⁵ In the LOI response, Shubat admits that it continued operating WPMH780 for almost seven years after the license expired.¹⁶

III. DISCUSSION

5. Section 301 of the Act and section 1.903(a) of the Rules prohibit the use or operation of any apparatus for the transmission of energy or communications or signals by radio except under, and in accordance with, a Commission-granted authorization.¹⁷ Additionally, section 1.949(a) of the Rules requires that licensees file renewal applications for wireless radio stations, “no later than the expiration date of the authorization for which renewal is sought, and no sooner than 90 days prior to expiration.”¹⁸ Absent a timely filed renewal application, a wireless radio station license automatically terminates.¹⁹

⁷ See File No. 0004145420.

⁸ *Id.* WTB granted the STA on March 12, 2010, without prejudice to any enforcement action related to the unauthorized operation of station WPMH780.

⁹ See File No. 0004183254.

¹⁰ *Id.*

¹¹ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Tim Sanders, Director, Shubat Transportation (July 16, 2010).

¹² See Letter from Timothy Sanders, Director, Shubat Transportation, to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (July 27, 2010) (“LOI Response”).

¹³ See *id.*

¹⁴ See *id.*

¹⁵ See *id.* at 1-2.

¹⁶ Although its license automatically cancelled on July 30, 2003, Shubat claims to have operated the station only from September 1, 2003 through March 11, 2010. See *id.* at 2.

¹⁷ 47 U.S.C. § 301; 47 C.F.R. § 1.903(a).

¹⁸ 47 C.F.R. § 1.949(a).

¹⁹ 47 C.F.R. § 1.955(a)(1).

6. As a Commission licensee, Shubat was required to maintain its authorization in order to operate station WPMH780. Shubat admitted that it operated its PLMRS station without Commission authority for more than six years, from September 1, 2003 until March 11, 2010, when it applied for an STA. By operating station WPMH780 after the license expiration date, Shubat apparently violated section 301 of the Act and section 1.903(a) of the Rules. Shubat also apparently violated section 1.949(a) of the Rules by failing to timely file a renewal application for station WPMH780 while continuing to operate the station beyond its license term.

7. Section 503(b) of the Act²⁰ and section 1.80(a) of the Rules²¹ provide that any person who willfully or repeatedly fails to comply with the provisions of the Act or the Rules shall be liable for a forfeiture penalty. For purposes of section 503(b) of the Act, the term “willful” means that the violator knew that it was taking the action in question, irrespective of any intent to violate the Commission’s Rules, and “repeated” means more than once.²² Based on the record before us, it appears that Shubat’s violation of section 301 of the Act and section 1.903(a) of the Rules is willful and repeated, and its violation of section 1.949(a) of the Rules is willful.

8. In determining the appropriate forfeiture amount, section 503(b)(2)(E) of the Act directs us to consider factors, such as “the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”²³

9. Section 1.80(b) of the Rules sets a base forfeiture amount of \$10,000 for operation of a station without Commission authority and a base forfeiture amount of \$3,000 for failure to file required forms or information.²⁴ The Commission has held that a licensee’s continued operation without authorization and its failure to timely file a renewal application constitute separate violations of the Act and the Rules and warrant the assessment of separate forfeitures.²⁵ Accordingly, we herein propose separate forfeiture amounts for Shubat’s separate violations.

10. We propose a base forfeiture in the amount of \$10,000 for Shubat’s continued operation of station WPMH780 after the expiration of its license on July 30, 2003, and in addition, we propose the base forfeiture amount of \$3,000 for Shubat’s failure to file the renewal application for its PLMRS station within the time period specified in section 1.949(a) of the Rules, for a total base forfeiture of \$13,000. Shubat’s claimed lack of knowledge of the Commission’s Rules, the negligent acts or omissions of its employees or agents, and its subsequent remedial actions do not negate its liability for the instant

²⁰ 47 U.S.C. § 503(b).

²¹ 47 C.F.R. § 1.80(a).

²² See 47 U.S.C. § 312(f)(1) & (2). See also *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (the definitions of willful and repeated contained in the Act apply to violations for which forfeitures are assessed under section 503(b) of the Act).

²³ 47 U.S.C. § 503(b)(2)(E). See also 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures; *Forfeiture Policy Statement*, Report and Order, 12 FCC Rcd 17087, 17110 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”).

²⁴ 47 C.F.R. § 1.80(b). See also *Forfeiture Policy Statement*, 12 FCC Rcd at 17099 (noting that “[a]lthough we have adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, we retain our discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in Section 503 of the Act.”).

²⁵ See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 7433, 7438 (2004) (“*Discussion Radio*”).

violations.²⁶

11. The \$13,000 base forfeiture amount, however, is subject to adjustment, either upward or downward. Here, we find no basis for a downward adjustment. Once Shubat's license expired, it lacked the required authority to operate station WPMH780 but continued to do so. The Commission has emphasized that "[a]ll licensees are responsible for knowing the terms of their licenses and for filing a timely renewal application if they seek to operate beyond that term."²⁷

12. It is also well established that administrative oversight or inadvertence is not a mitigating factor warranting a downward adjustment of a forfeiture.²⁸ Shubat's reliance on a third party, the company that serviced its radio equipment, to file the necessary forms to reinstate the license does not provide grounds for a downward adjustment, as licensees are held responsible and accountable for the acts or omissions of its agents.²⁹ Similarly, although Shubat's disclosures and remedial efforts appear to precede the Commission's investigation or initiation of enforcement action, we find the company's actions dilatory. As Shubat acknowledged, it became aware of the violation on January 25, 2008, but waited until March 11, 2010 – over two years – to notify Commission staff and file a request for STA.³⁰ Under the circumstances and consistent with precedent, we decline to reduce the base forfeiture amount on these or other grounds, including Shubat's delayed (albeit voluntary) disclosure of the violation and its belated remedial efforts.³¹ Indeed, we are mindful of the fact that the reduced forfeiture amounts applied

²⁶ See *infra* notes 27, 29-31 and accompanying text.

²⁷ See *Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services*, 13 FCC Rcd 21027, 21071 ¶ 96 (1998) (noting that the renewal reminder letter is a "convenience to licensees [and] does not in any way absolve licensees from timely filing their renewal applications").

²⁸ See *Southern California*, 6 FCC Rcd at 4387 (stating that "inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance").

²⁹ See, e.g., *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863-64 (2002); *MTD, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 34, 35 (1991); *Wagenvoort Broadcasting Co.*, Memorandum Opinion and Order, 35 FCC 2d 361 (1972). We also note that, while Shubat claims to be unfamiliar with FCC processes and requirements, the materials it submitted in response to the Spectrum Enforcement Division's LOI show otherwise. As evidenced by its filings, Shubat employees were in direct contact with the Commission regarding the station license just a year prior to its expiration. See Fax from Joan Sullivan, General Manager, Shubat Transportation, to Ruth Taylor, Wireless Telecommunications Bureau (June 11, 2002) (seeking reinstatement of its license after the license was cancelled based on a prior communication between Shubat personnel and the Commission). Shubat also responded to inquiries made by the Wireless Telecommunications Bureau in the context of a 2001 audit of Private Land Mobile stations. See <http://wireless2.fcc.gov/UlsApp/UlsSearch/allHistory.jsp?licKey=1794709> (noting that Shubat's audit letter response stated "License Operational").

³⁰ In this regard, we note that one of the documents Shubat submitted in response to the Bureau LOI includes the following notations: "we are not licensed . . . \$10,000/day fine . . . renew every 10 years". See Notations on Sales Quote, January 25, 2008. It is clear, therefore, that Shubat was not only aware of its license's expiration, but also understood that substantial monetary penalties could result for such a violation.

³¹ See *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099, 6099 ¶ 7 (1994) (corrective action taken to comply with the Rules is expected, and does not mitigate any prior forfeitures or violations); *BASF Corporation*, Notice of Apparent Liability for Forfeiture, DA 10-2347 ¶ 10 (Enf. Bur., Rel. Dec. 17, 2010) ("*BASF Corporation*"). Also, in several analogous cases, we have found the base forfeiture amount is not subject to downward adjustment for good faith or voluntary disclosure where the violator's attempts to come into compliance were dilatory. See, e.g., *Miller Breweries East, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 127, 130 (Enf. Bur., Spectrum Enf. Div. 2008) (finding that a downward adjustment was unwarranted where the violator waited seven months to notify Commission staff and seek authority to operate the station); *Domtar Industries, Inc.*, (continued....)

in past cases do not appear to be creating sufficient incentives for all PLMRS licensees to monitor their license expiration dates and timely seek renewal.³²

13. Given the totality of the circumstances and consistent with the *Forfeiture Policy Statement*, we conclude that an upward adjustment of the \$13,000 base forfeiture is warranted.³³ In this regard, we take into account the fact that Shubat's unlawful operation continued for six and a half years and even after it became aware of the violation, an additional two years elapsed before it sought Commission authority.³⁴ Based on all the factors and evidence, including the extended period of unauthorized operation, we conclude that a proposed aggregate forfeiture of \$19,000 is appropriate.³⁵

IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act³⁶ and sections 0.111, 0.311 and 1.80 of the Rules,³⁷ Shubat Transportation Company **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of nineteen thousand dollars

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Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13811, 13816 (Enf. Bur., Spectrum Enf. Div., 2006) (finding that a downward adjustment was unwarranted where the violator waited eight months to notify Commission staff and seek authority to operate the station); *see also American Paging Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 10417, 10420 (Wireless Telecommunications Bureau, Enf. and Consumer Info. Div., 1997) (finding that a downward adjustment for voluntary disclosure was unwarranted where the violator did not reveal its violation until approximately one month after having various conversations with Commission staff regarding an STA and that a downward adjustment for good faith attempts to comply was unwarranted where the violator continued to operate the station without authorization after its STA request was denied); *see also Five Star Parking d/b/a Five Star Taxi Dispatch*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 18857, 18860-61 (Enf. Bur., Spectrum Enf. Div., 2007), *forfeiture ordered and paid*, 23 FCC Rcd 2649 (Enf. Bur., Spectrum Enf. Div., 2008); *Mitchell Electric Membership Cooperative*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 5538, 5541 (Enf. Bur., Spectrum Enf. Div., 2006) (in both cases a downward adjustment was unwarranted where the violator waited six months after becoming aware of the violation to notify Commission staff and seek authority to operate the station).

³² *See e.g., Mathews Readymix LLC*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 12828, 12831 (Enf. Bur., Spectrum Enf. Div. 2007) (proposing a forfeiture of only \$6,200 for unauthorized operation of a PLMRS station and for failure to file a timely license renewal application). We also note that the instant case is distinguishable from *Discussion Radio*, which turned on its particular facts. *See supra* note 25. In *Discussion Radio*, the Commission imposed a forfeiture against a broadcast licensee for 14 months of unauthorized operation, observing that the licensee's conduct in that case was not comparable to "pirate" radio operations. *Discussion Radio* at 7438. In reducing the forfeiture amount in *Discussion Radio* from \$10,000 to \$5,000, the Commission noted that the broadcast license renewal packet that would have facilitated timely renewal filing was misdirected to an incorrect address. *Id.* However, the Commission further limited its decision, stating that it would be "disinclined to propose reductions in future cases based on alleged errors in mailing license renewal materials." *Id.* at n.20.

³³ *See BASF Corporation* ¶ 11; *Call Mobile, Inc.*, Notice of Apparent Liability for Forfeiture, DA 11-8 ¶ 12 (Enf. Bur., Spectrum Enf. Div., Rel. Jan. 4, 2011) ("*Call Mobile*").

³⁴ *See* 47 C.F.R. § 1.80(b)(4), Note to Paragraph (b)(4): *Section II. Adjustment Criteria for Section 503 Forfeitures* (establishing "repeated or continuous violation" as an upward adjustment factor).

³⁵ While section 503(b)(6) of the Act bars the Commission from proposing a forfeiture for violations that occurred more than a year prior to the issuance of an NAL, we may consider the fact that Shubat's misconduct occurred over an extended period (between 2003 and 2010) to place "the violations in context, thus establishing the licensee's degree of culpability and the continuing nature of the violations." *Roadrunner Transportation Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671-72 (2000); *see also BASF Corporation* ¶ 9; *Call Mobile* ¶ 10. The forfeiture amount we propose herein relates only to Shubat's apparent violations that have occurred within the past year.

³⁶ 47 U.S.C. § 503(b).

³⁷ 47 C.F.R. §§ 0.111, 0.311, 1.80.

(\$19,000) for the willful and repeated violation of section 301 of the Act and section 1.903(a) of the Rules and the willful violation of section 1.949(a) of the Rules.

15. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Rules,³⁸ within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, Shubat Transportation Company **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 17 below.

16. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 270000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer – Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, DC 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Shubat Transportation Company must also send electronic notification to Ricardo.Durham@fcc.gov and to Celia.Lewis@fcc.gov on the date said payment is made.

17. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.80(f)(3) and 1.16 of the Rules. The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Account Number referenced in the caption. The statement must also be emailed to Ricardo.Durham@fcc.gov and to Celia.Lewis@fcc.gov. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

18. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by first class mail and certified mail, return receipt requested to Timothy Sanders, Director, Shubat Transportation Company, 618 West 41st Street, Hibbing, Minnesota 55746.

FEDERAL COMMUNICATIONS COMMISSION

Ricardo M. Durham
Acting Chief
Spectrum Enforcement Division
Enforcement Bureau

³⁸ 47 C.F.R. § 1.80.